

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 187 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

PARSHOTTAM G PATEL

Versus

STATE OF GUJARAT

Appearance:

MR. AVINASH THAKKAR WITH MR JR NANAVATI for Petitioner

MR. L.R.POOJARI, LD.GOV'T. PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 13/08/97

ORAL JUDGEMENT

The Petitioner before me happens to be one Parshottam Patel, who appears to be the proprietor of an establishment known as " Sanjay Khandsari Udyog " at Dhoraji under the Rajkot district of the State. The petitioner used to run a Khandsari factory known as

Sanjay Khandsari Udyog at Dhoraji and had asked for the Non Agricultural Permission in respect of a piece of land, so that he can use and utilise the said piece of land for the purpose of keeping the crushed sugar canes for drying under the sun. According to him, this permission came to be granted to him by the District Panchayat under the orders dated 7th November 1981. Later on the entire matter was taken under suo motu revision under section 211 of the Bombay Land Revenue Code, 1879 by the Government. In this suo motu revision it was the view of the Government being expressed through the Special Secretary that, the above said orders granting N.A. Permission dated 7th November 1981 were required to be quashed and set aside. It has been said in the orders of the State Government that, the grant of the N.A. Permission was in contravention and in violation of certain circular which came to be issued later on. The above said orders available at Annexure-B dated July 02, 1985 are in challenge in the present petition on two grounds. The first ground is that the orders granting the N.A. Permission could not have been taken in suo motu revision after a period of about one year and four months. The second ground of attack in the present petition is that, the Special Secretary was not justified in placing reliance upon a subsequent development, while setting at naught the permission granted under the earlier orders.

It is not in dispute before me that the N.A. Permission came to be granted by the District Panchayat under the orders dated 7-11-1981, and that the necessary show cause notice for the exercise of powers under section 211 of the Bombay Land Revenue Code, 1879 came to be issued only on 30-3-1983, and later on under the exercise of the above said powers, the said orders granting N.A. permission came to be set at naught.

Ld. counsel Mr. Avinash Thakkar, appearing for ld. counsel Mr. J.R. Nanavati urges that the course adopted by the Government is in total disregard of the say of the Supreme Court in case of State of Gujarat, Appellat v. Patel Raghav Natha and others, Respondents, A.I.R. 1969, S.C. pg. 1297. It was also a case of the powers of the Commissioner to revise the orders made under section 65 in the exercise of the powers of suo motu revision under section 211 of the Bombay Land Revenue Code 1879. The Supreme Court has taken the view that, this power of revision must be exercised with a few months. The say of the Supreme Court appears to be based upon a conjoint reading of the provisions contained under section 65 and section 211 of the Bombay Land Revenue

Code, 1879. The Apex Court has pointed out that, section 65 of the Code of 1879 says that, if the Collector does not inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted. According to the say of the Supreme Court, a period of three months is considered to be ample for the Collector to make up his mind. It is in view of the above said provisions of the Bombay Land Revenue Code 1879, that the Supreme Court has said that the power under section 211 of the Code must be exercised within a few months. Reverting to the facts of the case, undoubtedly the orders granting N.A. use permission are dated 7-11-1981, while the show cause notice came to be issued on 30-3-1983. This cannot be said to have been done by the State Government within the reasonable time as understood within the meaning of the Supreme Court pronouncement in case of Raghav Natha (supra). Thus, it appears that, the first contention being raised by learned counsel Mr. Thakkar requires to be accepted, because in my opinion, the said powers of suo motu revision could not have been exercised by the State Government after such a long time.

The second challenge being posed by the petitioner is that, the cancellation of the N.A. Permission was sought to be justified on the ground of some later circular or later instructions being issued by the Government. Ld. counsel Mr. Thakkar is perfectly justified in making a grievance before me that, this could not have been done. The permission which came to be granted by the District Panchayat, regard being had to the existing legal frame work, could not have been set aside by the State Government later on, on the basis of some later notification or circular, projecting a changed policy of the Government in that field. The contention is well founded one and too clear to call for much deliberation or for the assignment of the elaborate reasons. The second contention therefore also requires to be accepted.

When both the contentions coming from ld. counsel Mr. Thakkar is accepted, it is abundantly clear that the present petition requires to be allowed and the impugned orders require to be quashed and set aside. I order accordingly. The earlier orders granting N.A. permission therefore shall stand revived and maintained. Rule is made absolute. No order as to costs.

/vgn.